

RUSSELL BIRDSALL
Claimant

SHAWNEE MISSION FORD, INC.
Respondent

LIBERTY MUTUAL INSURANCE COMPANY
Insurance Carrier

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ORDER

ISSUES

On appeal, the respondent contends the Administrative Law Judge's preliminary hearing Order should be reversed. Respondent argues that claimant's decision to light a cigarette on a break when his hands were drenched with flammable brake fluid created a personal risk and had no relationship to his employment with respondent. Therefore, the respondent asserts that claimant did not suffer an accidental injury that arose out of and in the course of his employment.

The Appeals Board finds the Administrative Law Judge's preliminary hearing Order should be affirmed. The Appeals Board agrees with the Administrative Law Judge's conclusion that claimant suffered an accidental injury that arose out of and in the course

of his employment with respondent. The Appeals Board also agrees with the Administrative Law Judge's reasons and analysis contained in the preliminary hearing Order that support this conclusion. Thus, the Appeals Board finds it is not necessary to repeat the Administrative Law Judge's findings and conclusions in this Order and adopts them as its own.

In particular, the Appeals Board finds claimant was injured while taking a cigarette break authorized by the respondent. The cigarette break is considered analogous to a coffee break and the personal comfort doctrine would control. Thus, when accidental injuries occur while on an authorized break there is not a departure from the employment relationship and the injury is compensable.¹

WHEREFORE, the Appeals Board finds that Administrative Law Judge Julie A. N. Sample's November 27, 2000, preliminary hearing Order should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March, 2001.

BOARD MEMBER

c: Roy T. Artman, Lawrence, KS
Omid Amjadi, Overland Park, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director

¹ See Wallace v. Sitel of North America, WCAB Docket No. 242,034 (Oct. 1999).